



2026:CGHC:1136-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****First Appeal (M) No. 81 of 2019**

Smt. Laxmi Verma W/o Shri Ghanshyam Verma Aged About 30 Years D/o Balaram Verma Aged about 30 Years, Presently R/at C/o Ajay, Verma Housing Board Colony, Kohka, Near Water Tank, Bhilai, Tahsil And District Durg Chhattisgarh., District : Durg, Chhattisgarh

... Appellant/Defendant**versus**

Ghanshyam Verma S/o Santram Verma Aged About 32 Years R/o Shankarpur, Ward Nao.7, Rajnandgaon, Tahsil And District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh

... Respondent/Plaintiff

For Appellant	: Mr. P.R. Patankar assisted by Ms. Vartika Shrivastava, Advocate
For Respondent	: Mr. Rakesh Thakur, Advocate

DB- Hon'ble Shri Justice Sanjay K. Agrawal
Hon'ble Shri Justice Sanjay Kumar Jaiswal
Judgment On Board
08.01.2026

**Sanjay K. Agrawal, J.**

1. Invoking jurisdiction of this Court under Section 19(1) of Family Court Act, 1984 read with Section 28 of Hindu Marriage Act, 1955 (hereinafter, the Act of 1955), the appellant/defendant has preferred this appeal against the impugned judgment and decree dated 10/01/2019 (Annexure A/1) passed by the Family Court, Rajnandgaon in Civil Suit No. 138-A/2014 whereby decree for dissolution of marriage on the ground of cruelty and desertion enumerated under Sections 13(1)(ia) and (ib) of the Act of 1955 has been passed in favour of the respondent/plaintiff.
2. The aforesaid question arises on the following factual backdrop :-
 - (a) The marriage of appellant/defendant/wife and respondent/plaintiff/husband was solemnized on 19/05/2013 as per Hindu rites and rituals. Thereafter, on account of matrimonial discord between them, appellant/defendant left her matrimonial home which led the respondent/plaintiff to file application for divorce under Section 13(1) of the Act of 1955 as back as on 30/10/2014.
 - (b) Learned Family Court, Rajnandgaon, by its impugned judgment and decree dated 10/01/2019 (Annexure A/1) granted decree for divorce in favour of the respondent/plaintiff. It is pertinent to mention here that



during the pendency of the suit or at the time of granting decree, the appellant/defendant did not file any application under Section 25(1) of the Act of 1955 for grant of permanent alimony and as such, the question of grant of permanent alimony was not looked into by the Family Court while granting decree for divorce in favour of the respondent/plaintiff.

3. Mr. P.R. Patankar, learned counsel for the appellant/defendant, would submit that during mediation, respondent/plaintiff disclosed that he has already entered into second marriage and is blessed with a daughter, now aged about 6 years, therefore, the appellant/defendant is not pressing the appeal for consideration on merits and only the question of permanent alimony may be decided and she may be granted permanent alimony under Section 25(1) of the Act of 1955. Appellant/defendant has also filed affidavit as required in view of the decision rendered by the Supreme Court in the matter of **Rajnesh v. Neha**¹ which has been followed recently in the matter of **Jiya v. Kuldeep**².

4. Mr. Rakesh Thakur, learned counsel for the respondent/plaintiff, would oppose the prayer for grant of permanent alimony to the appellant/defendant in absence of separate application filed by the appellant/defendant

1 (2021) 2 SCC 324

2 AIR 2025 SC 781



either before the Family Court or in this appeal before this Court. He would further submit that prior to this stage, no whisper has been made by the appellant/defendant for grant of permanent alimony and even otherwise, grant of permanent alimony requires recording of oral and documentary evidence in that regard, as such, the instant appeal is liable to be dismissed.

5. We have heard learned counsel for the parties, considered their submissions made herein-above and went through the records with utmost circumspection.
6. Since the appellant/defendant is not questioning the validity and correctness of the impugned judgment and decree passed by the Family Court granting decree for divorce in favour of the respondent/plaintiff on merits, the question that remains for consideration is, “whether the appellant/defendant is entitled for grant of permanent alimony under Section 25(1) of the Act of 1955 ?”
7. In order to raise the plea at the Bar, it would be appropriate to notice the provision contained under Sub-section (1) of Section 25 of the Act of 1955, which states as under :-

“25. Permanent alimony and maintenance. - (1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or



periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent."

8. A careful perusal of Sub-section (1) of Section 25 of the Act of 1955 would show that the application for maintenance may be made at the time of passing of the decree for restitution of conjugal rights or judicial separation, or dissolution of marriage by divorce or annulment of the marriage on the ground that it is void or voidable or even at any time subsequent thereto. As such, passing of decree disrupting or affecting the marriage as well as filing of separate application for permanent alimony is *sine qua non* under Section 25(1) of the Act of 1955.
9. In this regard, the decision rendered by the Supreme Court in the matter of **Chand Dhawan (SMT) v. Jawaharlal Dhawan**³ may be noticed herein profitably in which their Lordships have clearly held that 'decree' in context refers to any decree provided under Sections 9 to 14 affecting or disrupting the marital status but does not include any order dismissing the petition under any of those sections thereby sustaining the marital status, and settling the controversy between the decisions of the various

3 (1993) 3 SCC 406



High Courts, their Lordships of the Supreme Court have authoritatively held as under :-

“23. The preamble to the Hindu Marriage Act suggests that it is an Act to amend and codify the law relating to marriage among Hindus. Though it speaks only of the law relating to marriage, yet the Act itself lays down rules relating to the solemnization and requirements of a valid Hindu marriage as well as restitution of conjugal rights, judicial separation, nullity of marriage, divorce, legitimacy of children and other allied matters. Where the statute expressly codifies the law, the court as a general rule, is not at liberty to go outside the law so created, just on the basis that before its enactment another law prevailed. Now the other law in the context which prevailed prior to that was the uncodified Hindu law on the subject. Prior to the year 1955 or 1956 maintenance could be claimed by a Hindu wife through court intervention and with the aid of the case-law developed. Now with effect from December 21, 1956, the Hindu Adoptions and Maintenance Act is in force and that too in a codified form. Its preamble too suggests that it is an Act to amend and codify the law relating to adoptions and maintenance among Hindus. Section 18(1) of the Hindu Adoptions and Maintenance Act, 1956 entitles a Hindu wife to claim maintenance from her husband during her lifetime. Sub-section (2) of Section 18 grants her the right to live separately, without forfeiting her claim to maintenance, if he is guilty of any of the misbehaviours enumerated therein or on account of his being in one of objectionable conditions as mentioned therein. So while sustaining her marriage and preserving her marital status, the wife is entitled to claim maintenance from her husband. On the other hand, under the Hindu Marriage Act, in contrast, her claim for maintenance pendente lite is durated (*sic*) on the pendency of a litigation of the kind envisaged under Sections 9 to 14 of the Hindu Marriage Act, and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree



of nullity or divorce, with or without her consent. Thus when her marital status is to be affected or disrupted the court does so by passing a decree for or against her. On or at the time of the happening of that event, the court being seisin of the matter, invokes its ancillary or incidental power to grant permanent alimony. Not only that, the court retains the jurisdiction at subsequent stages to fulfil this incidental or ancillary obligation when moved by an application on that behalf by a party entitled to relief. The court further retains the power to change or alter the order in view of the changed circumstances. Thus the whole exercise is within the gammit (*sic* gamut) of a diseased or a broken marriage. And in order to avoid conflict of perceptions the legislature while codifying the Hindu Marriage Act preserved the right of permanent maintenance in favour of the husband or the wife, as the case may be, dependent on the court passing a decree of the kind as envisaged under Sections 9 to 14 of the Act. In other words without the marital status being affected or disrupted by the matrimonial court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same socio-legal scheme revolutionizing the law applicable to Hindus.

28. On the afore-analysis and distinction drawn between the fora and perceptives, it is difficult to come to the view that a claim which is ancillary or incidental in a matrimonial court under the Hindu Marriage Act could be tried as an original claim in that court; a claim which may for the moment be assumed as valid, otherwise agitable in the civil court under the Hindu Adoptions and Maintenance Act, 1956. As said before, these two enactments keeping apart, the remaining two, i.e., Hindu Succession Act, 1956 and Hindu Minority and Guardianship Act, 1956 are a package of enactments, being part of one socio-legal scheme applicable to Hindus. When distinctive claims are covered distinctly under two different statutes and agitable in the courts conceived of thereunder, it is difficult to sustain



the plea that when a claim is otherwise valid, choosing of one forum or the other should be of no consequence. These are not mere procedural technicalities or irregularities, as termed by one line of reasoning by some of the High Courts. These are matters which go to the root of the jurisdiction. The matrimonial court, a court of special jurisdiction, is not meant to pronounce upon a claim of maintenance without having to go into the exercise of passing a decree, which implies that unless it goes onwards, moves or leads through, to affect or disrupt the marital status between the parties. By rejecting a claim, the matrimonial court does make an appealable decree in terms of Section 28, but that neither affects nor disrupts the marriage. It certainly does not pass a decree in terms of Section 25 for its decision has not moved or done anything towards, or led through, to disturb the marriage, or to confer or take away any legal character or status. Like a surgeon, the matrimonial court, if operating, assumes the obligation of the post operatives, and when not, leaves the patient to the physician.”

10. Thus, one of the conditions precedent for grant of permanent alimony is dissolution of marriage which is present in the instant case as the Family Court has dissolved the marriage by granting decree for divorce in favour of the respondent/plaintiff.
11. The next condition precedent for grant of permanent alimony as per Section 25(1) of the Act of 1955 is filing of application by either the wife or husband, as the case may be. The question as to whether permanent alimony or maintenance can be granted without filing an application for the same, by either the husband or wife as the case may be, came up for consideration before the Madhya Pradesh



High Court in the matter of **Jitbandhan v. Gulab Devi**⁴ way back in the year 1982 wherein Justice G.P. Singh (C.J.), speaking for the Bench, clearly held that jurisdiction under Section 25 for granting permanent alimony on decree being passed arises only “on application made to it (Court) for that purpose by either the wife or the husband” and in the absence of an application, the Court has no jurisdiction to pass an order under Section 25.

12. The aforesaid principle of law laid down in **Jitbandhan** (supra) was again followed with approval by the Madhya Pradesh High Court in the matter of **Chhaya Kshatriya v. Pramod Kumar Kshatriya**⁵ wherein the ambit and scope of Section 25 of the Act of 1955 was considered and it has been held that the requirement of application under Section 25 of the Act of 1955 cannot be treated to be directory. When a liability is going to be saddled on the husband or wife, and the liability can be onerous, there has to be compliance with principles of natural justice. It was further held that if no application is filed and the plea of the relief-seeker is not known and the other side is kept in dark and the court exercises its jurisdiction without proper scrutiny of the factual backdrop, and without being in a position to consider the defences of the other side, the whole

4 1982 SCC Online MP 275

5 1992 (2) MPJR 82



adjudication would be against the concept of *audi alteram partem*.

13. The Supreme Court in the matter of **Rajnesh** (supra) has laid down guidelines to be considered while granting permanent alimony and the first guidelines reads, “parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the concerned Court, for fixing the permanent alimony payable to the spouse”.
14. Reverting to the facts of the present case, in light of the principles of law laid down by the Madhya Pradesh in the matters of **Jitbandhan** (supra) and **Chhaya Kshatriya** (supra), which would be binding on this Court as they were rendered prior to 01.11.2000, before formation of new State of Chhattisgarh, express application seeking grant of permanent alimony, at the time of granting decree or at any time thereafter, is necessarily required to be filed before the jurisdictional Family Court and without such application, no relief of permanent alimony can be granted by this Court. As also has been held by the Supreme Court in **Rajnesh** (supra), the oral and documentary evidence with respect to income, expenditure, standard of living, etc. has to be rendered by the Court for fixing permanent alimony payable to the spouse. Therefore, express application for claiming permanent alimony ought to have been filed by the



appellant/defendant before the Family Court and thereafter, oral and documentary evidence ought to have been led in this regard. This Court, does not have necessary material on record to decide the question of grant of permanent alimony and it can also not be considered as express application for the same has not been filed by the appellant/defendant before this Court. As such, grant of decree for permanent alimony as prayed by the appellant/defendant is hereby declined. However, this would not come under the way of the appellant/defendant for filing application under Section 25(1) of the Act of 1955 for grant of permanent alimony before the jurisdictional Family Court. If such an application is filed by the appellant/defendant, the Family Court shall consider it on merits in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the matter.

15. In view of the aforesaid observation, this appeal stands disposed of. No cost(s).

SD/-
(Sanjay K. Agrawal)
JUDGE

SD/-
(Sanjay Kumar Jaiswal)
JUDGE